

**FILED****JUL 28 2009**

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: ) Case No. 09-28215-D-13L  
Robert Darryl Maxwell and ) Docket Control Nos. RTD-1,  
Rebecca Marie Maxwell, ) NLE-1  
Debtors. ) Date: July 7, 2009  
Time: 1:00 p.m.  
Dept: D

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MEMORANDUM DECISION

On April 28, 2009, the debtors herein, Robert Darryl Maxwell and Rebecca Marie Maxwell ("the debtors"), filed their petition commencing this case, along with a proposed chapter 13 plan ("the plan"). On June 10 and June 11, 2009, respectively, the chapter 13 trustee, Lawrence J. Loheit ("the trustee"), and creditor The Golden 1 Credit Union ("the Credit Union") filed timely objections to confirmation of the plan ("the Objections"). For the reasons set forth below, the court will sustain the Objections.

I. INTRODUCTION

In the plan, the debtors propose to pay \$550 per month for 60 months, which will yield nothing for general unsecured creditors. Because the plan does not propose a 100% dividend to unsecured creditors, and because the trustee and the Credit Union, as the holder of an unsecured claim, have objected, the plan must provide that all the debtors' projected disposable

1 income to be received during the applicable commitment period  
2 will be applied to make payments to unsecured creditors under the  
3 plan. 11 U.S.C. § 1325(b)(1).<sup>1</sup>

4 The issue is whether the debtors have projected disposable  
5 income, as defined in § 1325(b)(2), thus allowing confirmation  
6 only if their plan provides for a dividend to the unsecured  
7 creditors, as §1325(b)(1)(B) requires.

## 8 II. ANALYSIS

9 The answer derives from an analysis of the debtors' Chapter  
10 13 Statement of Current Monthly Income and Calculation of  
11 Commitment Period and Disposable Income, Form B22C, filed April  
12 28, 2009 ("Form B22C" or "B22C"). The Credit Union and the  
13 trustee contend that the debtors used inappropriate figures in  
14 the B22C, and that when the figures are corrected, the debtors  
15 have disposable income, and thus, must provide for payments to  
16 unsecured creditors.

### 17 A. Deduction for Business Expenses

18 The Credit Union and the trustee originally objected to the  
19 \$1,850 business expense deduction on line 3b<sup>2</sup> of the Form B22C on  
20 the ground that the debtors had failed to file an itemization of  
21 those expenses. Although the J-schedule clearly requires a  
22 detailed itemization, the debtors failed to include one with  
23 their original schedules, but finally filed one only after the

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24  
25 1. Unless otherwise indicated, all Code, chapter, section  
26 and Rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
1001-9037.

27 2. Unless otherwise noted, all references to particular  
28 line items will refer to the line items on the Form B22C.

1 Objections were filed. The itemization lists the expenses of  
2 Mrs. Maxwell's pet grooming business.

3 The court gave the Credit Union and the trustee an  
4 opportunity to respond to the itemization, and the court has  
5 considered their responses. The court finds that the vehicle and  
6 internet deductions, \$180 and \$48, respectively, appear to be  
7 duplicative of the household expenses deducted later in the Form  
8 B22C. The court rejects the Credit Union's additional argument,  
9 that the \$30 repair and maintenance expense is duplicative of a  
10 household expense, and finds instead that such an expense appears  
11 reasonable for the business.

12 The court finds persuasive the Credit Union's analysis of  
13 the debtors' business expenses, as listed on the detailed  
14 itemization, as contrasted with their business expenses, as  
15 listed on the Schedule C to their 2008 tax return. The former  
16 total \$1,850, the latter, \$1,319.73. While the debtors have not  
17 had an opportunity to respond to this analysis, that is a  
18 situation of their own making. Had they filed the detailed  
19 itemization with their J-schedule, as required, the Credit Union  
20 could have presented its argument in its objection to  
21 confirmation, and the debtors could have responded.

22 Absent an explanation of the discrepancy, the court will  
23 allow the business expenses claimed as deductions on the debtors'  
24 tax return, \$1,319.73, as a starting point.<sup>3</sup> The court will  
25

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26 3. The court notes also that the debtors are projecting  
27 lower income from the business on a go-forward basis than they  
28 actually made in 2008. Compare the debtors' I-schedule with  
their Statement of Financial Affairs, answer to question 1.

(continued...)

1 deduct from that figure the \$151.16 vehicle expense and the \$48  
2 internet expense as duplicative of the debtors' household  
3 expenses. This leaves \$1,120.57 in business expenses the court  
4 will allow, which is \$729.43 less than the amount claimed,  
5 \$1,850. Thus, the court will add \$729 to the debtors' Monthly  
6 Disposable Income ("MDI") on line 59 of the Form B22C.

7 The Credit Union also argues that the debtors have  
8 improperly deducted their business expenses "above the line" on  
9 the Form B22C; that is, in computing current monthly income,  
10 contrary to Drummond v. Wiegand (In re Wiegand), 386 B.R. 238  
11 (9th Cir. BAP 2008). The Wiegand panel held that business  
12 expenses must be deducted from current monthly income, in  
13 computing disposable income, rather than from gross receipts, in  
14 computing current monthly income. Wiegand at 242. Thus, the  
15 panel concluded that the Form 22C should be revised. Id. at 243.

16 In this case, the deduction of the business expenses "above  
17 the line;" that is, in computing current monthly income, did not  
18 result in placing the debtors below the median income, nor did  
19 the debtors attempt to deduct the expenses as a whole both above  
20 and below the line. Thus, the concerns raised in Wiegand (see  
21 Wiegand at 241) are not present in this case, and the court  
22 concludes that it is irrelevant where the debtors took the  
23 deduction, except that they appear to have deducted the vehicle  
24 and internet expenses twice, as discussed above.

25 / / /

26 \_\_\_\_\_  
27 3. (...continued)  
28 Absent an explanation, the projection of business expenses at  
\$500 per month higher than as reported on their 2008 tax returns  
is not reasonable.

1 Finally, the Credit Union raised for the first time in its  
2 response the suggestion that Mrs. Maxwell's business income may  
3 be understated on the Form B22C. Thus, the Credit Union argues  
4 that \$300 should be added to the debtors' MDI. However, although  
5 the amount of the business income appears on the detailed  
6 itemization of business expenses, that figure and the rest of the  
7 information tending to support this argument were available to  
8 the Credit Union when it originally filed its Objection. As the  
9 Credit Union failed to raise the argument at that time, the court  
10 will not consider it now.

11 B. Deduction for "Two Old Cars"

12 Both the Credit Union and the trustee object to a \$400  
13 deduction for "two old cars" as a housing and utilities  
14 adjustment on line 26. They point out that the debtors also  
15 deducted transportation expenses for two cars on line 27A and  
16 ownership expenses for two cars on lines 28 and 29. The debtors  
17 listed only two cars on their B-schedule -- a 2003 Ford Explorer  
18 and a 2003 Ford F-250. The two old cars were not disclosed.

19 The debtors' only response to these (and other) objections  
20 is that they "very much disagree," but that even if these  
21 objections were sustained, the debtors' disposable income on the  
22 B22C would still be zero, rendering the objections irrelevant.<sup>4</sup>

23 Because the debtors have failed to offer an argument or  
24 evidence to the contrary, the court will presume the debtors  
25 concede the point. Further, a deduction for "two old cars" as a  
26

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27 4. Opposition to Trustee's Objection to Confirmation, filed  
28 July 2, 2009, 2:18-27; Opposition to Objection to Confirmation by  
Golden One, filed July 2, 2009, 2:3-15.

1 housing or utilities expense makes no sense. Accordingly, the  
2 court will add \$400 to the MDI.

3 C. Deduction for Taxes

4 The Credit Union objects to the \$1,200 deduction on line 30  
5 of the Form B22C for income, self-employment, social security,  
6 and Medicare taxes. The Credit Union points out that the  
7 debtors' actual federal tax liability for 2008 was \$6,351, and  
8 their state tax liability was \$807, for a total of \$7,158, or  
9 \$596.50 per month.<sup>5</sup> The Credit Union adds \$101 for Medicare  
10 taxes (based on Mr. Maxwell's 2008 income of \$83,864 as listed in  
11 the Statement of Financial Affairs), bringing their total tax  
12 liability to approximately \$700 per month, or \$500 less than the  
13 \$1,200 listed on the Form B22C.

14 The debtors again present no argument or evidence in  
15 response, except to "very much disagree." The court will treat  
16 this response as a concession, and therefore, will add \$500 to  
17 the debtors' MDI.

18 D. Deduction for Involuntary Deductions for Employment

19 The Credit Union objects to the \$600.55 figure for  
20 involuntary deductions such as mandatory retirement contributions  
21 and union dues, on line 31, as being inconsistent with the  
22 debtors' schedules and tax return. On their I-schedule, the  
23 debtors listed \$378.19 as a monthly PERS deduction and \$84.87 in  
24 monthly union dues. On their 2008 tax returns, they listed \$900

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25  
26 5. A comparison of the debtors' I- and J-schedules with  
27 their 2008 income, as reported on the Statement of Financial  
28 Affairs, shows that they are projecting a lower income this year  
than last, and thus, their tax liability may reasonably be  
assumed to be no higher than last year.

1 for union dues, or \$75 per month. Thus, the correct deduction  
2 appears to be \$453 (\$378 + \$75), or \$147 less than the debtors  
3 claim on line 31.

4 In the absence of any explanation other than that they "very  
5 much disagree," the court will add \$147 to the debtors' MDI.

6 E. Deduction for Health Care Expenses

7 The Credit Union objects to the \$130 deduction on line 36  
8 for health care expenses not reimbursed by insurance, arguing  
9 that the figure is excessive. The debtors offer only the  
10 ubiquitous response that they very much disagree.

11 However, the objection is too vague to be convincing, and  
12 the court finds that \$130 is not excessive for a family of two.<sup>6</sup>

13 F. Deduction for Extra Telecommunications Services

14 The Credit Union and the trustee object to the \$200  
15 deduction on line 37 for necessary telecommunications services  
16 other than basic home telephone and cell phone services. The  
17 debtors offered no explanation or itemization of this expense at  
18 the meeting of creditors.<sup>7</sup> Further, the debtors' J-schedule  
19 includes \$205 for cable, internet, and cell phones, and the Form  
20 B22C includes a housing and utilities expense on line 25A.

21 \_\_\_\_\_  
22 6. The \$130 figure is actually lower than the \$250 in  
23 medical and dental expenses listed on the debtors' J-schedule.

24 The court rejects the Credit Union's argument that the  
25 deduction is not appropriate because the debtors listed no  
26 deduction for medical expenses on Schedule A of their tax  
27 returns. Medical expenses listed on that schedule are meaningful  
28 to the tax return only if the total exceeds a significant  
percentage of the debtors' adjusted gross income. The absence of  
a figure on that schedule, therefore, does not support a  
conclusion that the taxpayer had no medical expenses.

7. Declaration of Roxanne Daneri, filed June 11, 2009.

1 The debtors "very much disagree" with the trustee and the  
2 Credit Union, but offer no substantive response. Thus, the court  
3 will sustain the objections and add \$200 to the debtors' MDI.

4 G. Deduction for Medical and Disability Insurance Premiums

5 The debtors deduct \$693 on line 39 for "insurance premiums."  
6 The Credit Union objects to this amount, noting that \$693 is  
7 approximately double the amount of the deductions on the debtors'  
8 2005 paystubs, which are the only paystubs the Credit Union has  
9 been able to review.

10 The debtors had an opportunity to refute this argument with  
11 more recent paystubs or with their own testimony, but they have  
12 offered nothing. Accordingly, the court will add one-half of  
13 \$693, or \$346, to the MDI.

14 H. Deduction for Contributions to the Care of Family Members

15 The Credit Union and the trustee object to the \$300  
16 deduction on line 40 for the care of household or family members.  
17 The debtors' testimony at the meeting of creditors was that they  
18 help Mr. Maxwell's mother when they can and in varying amounts.  
19 Thus, the argument goes, this is not a regular and necessary  
20 payment.

21 The debtors counter with Mrs. Maxwell's testimony that they  
22 spend an average of \$300 per month for groceries and medicine for  
23 Mr. Maxwell's mother, who is in her late 60's, is widowed, and  
24 has Social Security as her only source of income.

25 This testimony sufficiently supports the conclusion that  
26 this is an actual expense that is "reasonable and necessary for  
27 care and support of an elderly . . . member of the debtor's  
28 immediate family . . . who is unable to pay for such . . .



1 expenses."<sup>8</sup>

2 I. Deduction for Future Payments on Secured Claims

3 The debtors deduct \$314 and \$41, respectively, on lines 47  
4 and 48 for ongoing payments to the Credit Union on account of its  
5 second deed of trust on the debtors' residence.

6 The Credit Union argues that because the debtors seek to  
7 strip off the deed of trust as wholly unsecured (a motion the  
8 Credit Union has not opposed), they are not entitled to these  
9 deductions. The trustee makes the same argument, citing Thissen  
10 v. Johnson, 2009 U.S. Dist. LEXIS 46618 (E.D. Cal. May 26, 2009).

11 The debtors apparently concede the point, arguing only that  
12 they "very much disagree." Thus, the court will add \$314 and  
13 \$41, a total of \$355, to the MDI.

14 III. COMPUTATION

15 Based on the foregoing, the court makes the following  
16 adjustments to the debtors' MDI:

|    |           |   |
|----|-----------|---|
| 17 | <\$1,878> | MDI per the Debtors (Form B22C, line 59)          |
| 18 | + 729     | Business expenses (line 3b)                       |
| 19 | + 400     | Two old cars (line 26)                            |
| 20 | + 500     | Taxes (line 30)                                   |
| 21 | + 147     | Employment deductions (line 31)                   |
| 22 | + 200     | Telecom services (line 37)                        |
| 23 | + 346     | Health insurance premiums (line 39)               |
| 24 | + 355     | Future payments on secured claims (lines 47 & 48) |
| 25 |           |   |
| 26 | \$ 799    | Adjusted MDI                                      |

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27  
28 8. § 707(b)(2)(A)(ii)(II), incorporated by § 1325(b)(2),  
(3).

Payment of \$799 per month over the 60-month plan term would generate \$47,940 for unsecured creditors. Because the plan fails to provide for such a dividend, it does not provide that all the debtors' projected disposable income to be received during the applicable commitment period will be applied to make payments to unsecured creditors under the plan, as required by § 1325(b)(1). Accordingly, the court will sustain the Objections. The court will issue an appropriate order.

Robert S. Bardwil  
ROBERT S. BARDWIL  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

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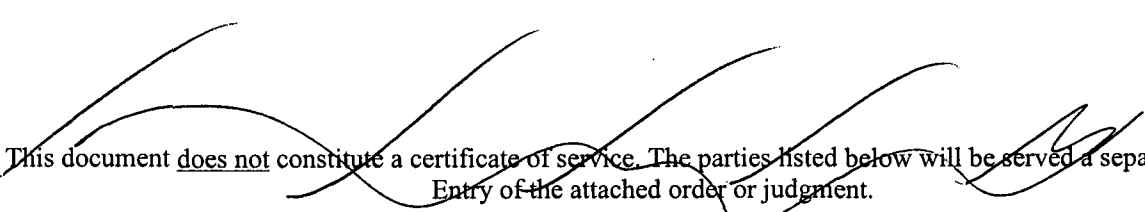
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By: 

Deputy Clerk

Cathy Guyer

EDC 3-070 (New 4/21/00)

This document does not constitute a certificate of service. The parties listed below will be served a separate Notice of Entry of the attached order or judgment.

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Roxanne Daneri  
555 University Ave #114  
Sacramento, CA 95825

Scott CoBen  
1214 F St  
Sacramento, CA 95814

Lawrence Loheit  
PO Box 1858  
Sacramento, CA 95812-1858

Office of the U.S. Trustee  
Robert T Matsui United States Courthouse  
501 I Street, Room 7-500  
Sacramento, CA 95814